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EXAMINER	
LUONG, VINH	

ART UNIT	PAPER NUMBER
3682	8

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/977,204	HAYASHIHARA et al.
Examiner	**Art Unit**
Luong	3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 3/17/03 .

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above, claim(s) 6-9 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-5 and 10-12 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☒ The proposed drawing correction filed on 3/17/03 is: a) ☒ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some* c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Vinh T. Luong
Primary Examiner

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *Exhibits 1 and 2*

1. The Amendment filed on March 17, 2003 (Paper No. 7) has been entered.

2. Claims 6-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 5.

3. The proposed drawing correction filed on March 17, 2003 has been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 2-4 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Amended claim 2 now calls for "said pair of guides *comprise* a pair of straight guides which are positioned such that extension lines of said straight guides intersect each other." By changing the closed term "consist of" in the original claim 2 to the open term "comprise" in amended claim 2, applicant introduces new matter because the original disclosure (see, e.g., page 23 et seq. of the specification) merely provides support for the closed term "consist of." See *Ex parte Grasselli*, 231 USPQ 395 (BPAI 1986).

It is well settled that the open term "comprise" covers structural elements recited plus additional element(s). See "comprising" and "consisting of" in *Special Metals Corp. v. Teledyne Industries, Inc.*, 219 USPQ 953 (CAFC 1983). In the instant case, applicant's pair of guides *consists of* a pair of straight guides 32 and 34 which are positioned such that extension lines EXT 1 and EXT 2 of said straight guides intersect each other as plainly seen in corrected Fig. 1. If applicant's pair of guides comprise the pair of straight guides 32 and 34 *plus additional element(s),* applicant's claimed pedal device would be inoperative for its intended design since the additional element(s) would not have their extension lines intersecting with each other. On the other hand, *Webster's II New Riverside University Dictionary* defines the term "pair" as being "two corresponding persons or items, similar in form or function and matched or associated." Therefore, if applicant's pair of guides *comprise* a pair of straight guides which are positioned such that extension lines of said straight guides intersect each other *plus additional element(s), the additional element(s) would not be similar in form or function and matched or associated.* In other words, the recitation "said pair of guides *comprise* a pair of straight guides" in applicant's amended claim 2 is in direct conflict with the ordinary and customary meaning of the term "pair" as seen in standard dictionaries. *CCS Fitness, Inc. v. Brunswick Corp.*, 62 USPQ2d 1658 (CAFC 2002)(claim term is presumed to have its ordinary and customary meaning).

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "said pair of guides *comprise* a pair of straight guides which are positioned such that extension lines of said straight guides intersect each other" in claim 2 is inaccurate and misdescriptive since the term "pair" signifies "two corresponding persons or items, similar in form or function and matched or associated" based on standard dictionaries, e.g., *Webster's II New Riverside University Dictionary*. In other words, "said pair of guides" inherently must consist of a pair of guides only, not additional element(s). *CCS Fitness, Inc. v. Brunswick Corp, supra.*

8. Claims 1, 5, 10, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sitrin (US Patent No. 4,875,385 which corresponds to Japanese Utility Model # 6-40292 cited by applicant on October 16, 2001).

Regarding claim 1, Sitrin teaches a pedal device mounted on a bracket 10 fixed to a body of an automotive vehicle, and including a pedal arm 12, 14 (see claim 5 below) having an operating portion 22 at a lower end thereof, and a position adjusting device operable to adjust a position of said operating portion 22 in a longitudinal direction of the automotive vehicle where said pedal arm 12, 14 is placed in a non-operated state thereof, said position adjusting device comprising:

a first member 12 having a pair of guides 12d and 12e;

a second member 14 disposed movably relative to said first member 12 in an *approximately* vertical plane *approximately* parallel to said longitudinal direction, and having a pair

of guide pieces 14c and 14d which are movable in engagement with said pair of guides 12d and 12e, respectively; and

a positioning device operable to establish a desired relative position between said first member 12 and said second member 14 by moving said pair of guides 12d and 12e and said pair of guide pieces 14c and 14d relative to each other, said positioning device permitting said first and second members 12 and 14 to maintain said desired relative position after said desired relative position is established,

wherein one (14) of said first and second members 12 and 14 has said operating portion 22 and is movable relative to the other (12) of said first and second members 12 and 14, to move said operating portion 22 in said longitudinal direction, and

wherein said pair of guides 12d and 12e are formed and positioned such that a vertical position of said operating portion 22 (shown by dashed lines connecting the top and bottom of portion 22 in Fig. 2 of Exhibit 1 attached) changes as said operating portion 22 is moved in said longitudinal direction.

Claim 1 is anticipated by Sitrin because Sitrin teaches each positive claimed element and its functional statement as seen in, e.g., Fig. 2. *Ibid.*, claims 1-18. On the other hand, it is well established that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art teaches all the structural limitations of the claims. *Ex parte Masham*, 2 USPQ2d 1647 (BPAI 1987). Put in another fashion, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish

the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In other words, the functional limitations of a claim may not be given patentable weight where those limitations are inherent in a prior art reference. *In re Schreiber*, 44 USPQ2d 1429 (CAFC 1997).

Regarding claim 5, said pedal arm includes said first and second members 12 and 14, and said other (12) of said first and second members 12 and 14 which does not have said operating portion 22 is a pivotal arm 12 which is disposed pivotally about a support shaft 32 supported by said bracket 10, said pedal arm 12, 14 being pivoted about said support shaft 32 when said pedal arm 12, 14 is operated at said operating portion 22. Ibid., line 18 et seq., column 4.

Regarding claim 10, said pair of guides 12d and 12e are formed and positioned such that the vertical position of said operating portion 22 changes (see Fig. 2 in Exhibit 1) while an operating surface (see Exhibit 1) of said operating portion 22 is gradually inclined as said operating portion 22 is moved in said longitudinal direction.

Regarding claim 11, said pair of guides 12d and 12e are formed and positioned such that the vertical position of said operating portion 22 is lowered (see Fig. 2 in Exhibit 1) while an operating surface of said operating portion 22 is gradually inclined upwards as said operating portion 22 is moved in a rearward direction of the vehicle parallel to said longitudinal direction.

9. Claims 1, 5, 10-12, and claims 2-4, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Toelke et al. (US Patent No. 6,367,348 B1).

Regarding claim 1, Toelke teaches a pedal device mounted on a bracket 20 fixed to a body of an automotive vehicle, and including a pedal arm 10 having an operating portion 16 at a lower end thereof, and a position adjusting device operable to adjust a position of said operating portion 16 in a longitudinal direction of the automotive vehicle where said pedal arm 10 is placed in a non-operated state thereof, said position adjusting device comprising:

a first member 12, 102, etc. (Figs. 1-12) having a pair of guides 28 and 30, 28a and 28b, etc.;

a second member 14 disposed movably relative to said first member 12, 102, etc. in an approximately vertical plane approximately parallel to said longitudinal direction, and having a pair of guide pieces 36, 38, etc. which are movable in engagement with said pair of guides 28 and 30, 28a and 28b, etc., respectively; and

a positioning device operable to establish a desired relative position between said first member 12, 102, etc. and said second member 14 by moving said pair of guides 28 and 30, 28a and 28b, etc. and said pair of guide pieces 36 and 38, etc. relative to each other, said positioning device permitting said first and second members to maintain said desired relative position after said desired relative position is established, and

wherein one (14) of said first and second members has said operating portion 16 and is movable relative to the other (12, 102, etc.) of said first and second members, to move said operating portion 16 in said longitudinal direction, and

wherein said pair of guides 28, 30, etc. are formed and positioned such that a vertical position of said operating portion 16 changes as said operating portion 16 is moved in said longitudinal direction.

Claim 1 is anticipated by Toelke because Toelke teaches each positive claimed element. Note that Toelke teaches: (a) in line 18 et seq., column 5 that the guides 28 and 30 can alternatively be separated portions of a single slot such as a "C-shaped," "S-shaped" or other nonlinear slot; and (b) in line 55 et seq., column 12 that the guides in the first and third embodiments (Figs. 1-8 and 10-12) can be inclined slots like the second, fourth, and fifth embodiments (Figs. 9 and 13-18). Therefore, when one changes the orientation of the Toelke's guides in Toelke's first and third embodiments (Figs. 1-8 and 10-12) to become inclined like Toelke's guides in Toelke's fourth and fifth embodiments (Figs. 13-18), the guides 28 and 30 become inclined in the same manner as shown in Toelke's Fig. 14 or applicant's Figs. 1 and 2. Consequently, Toelke's pair of guides 28 and 30 are formed and positioned such that a vertical position of said operating portion 16 changes as said operating portion 16 is moved in said longitudinal direction as best seen in Toelke's Fig. 14.

Regarding claim 2, Toelke teaches that said pair of guides *comprise* a pair of straight guides 28, 30 (Figs. 1-8 and 13-15), 28a and 28b (Fig. 9), and unnumbered in Figs. 11-12 which are positioned such that extension lines of said straight guides intersect each other such that an attitude of said operating portion 16 changes as said operating portion 16 is moved in said longitudinal direction as a result of a relative movement of said first and second members with said pair of guide pieces 36, 38, etc. being moved in engagement with said pair of straight guides 28, 30 (Figs. 1-8 and 13-15), 28a and 28b (Fig. 9), and unnumbered in Figs. 11-12, respectively.

Note that Toelke explicitly teaches in line 18 et seq., column 5 and line 55 et seq., column 12 that the guides in the first and third embodiments (Figs. 1-8 and 10-12) can be inclined slots like the second, fourth, and fifth embodiments (Figs. 9 and 13-18). Therefore, when one changes the orientation of the Toelke's guides in Toelke's first and third embodiments to become inclined like Toelke's guides in Toelke's fourth and fifth embodiments (Figs. 13-18), the guides become inclined in the same manner as shown in applicant's Figs. 1 and 2, consequently, Toelke's extension lines of the guides 28 and 30 intersect each other as best seen, e.g., in Fig. 14 (Exhibit 2). Consequently, claim 2 is anticipated by Toelke as expressly taught by Toelke.

Regarding claim 3, said pair of straight guides 28 and 30, 28a and 28b are positioned such that a vertical position of said operating portion 16 is lowered while an operating surface of said operating portion 16 is gradually inclined upwards as said operating portion 16 is moved in a rearward direction of the vehicle toward a seat of an operator of the vehicle as seen in Exhibit 2.

Regarding claim 4, said second member 14 has said operating portion 16 and is movable relative to said first member 12, 102, etc. and said positioning device comprises a relative -movement device including a feedscrew 84, etc. (Ibid., line 37 et seq., column 7) disposed on said first member 12, 102, etc. such that said feedscrew 84, etc. is parallel to one of said pair of straight guides 28, 30, etc., and rotatable about an axis thereof, and an internally threaded member 68 connected to one (38) of said guide pieces which engages said one (30) of said pair of straight guides, said internally threaded member 68 being held in engagement with said feedscrew 84, etc. and pivotable relative to said second member 14 about an axis perpendicular to said approximately vertical plane, and wherein said relative movement device is operable to rotate said feedscrew 84, etc. to move said second

member 14 relative to said first member 12, 102, etc. and maintain said desired relative position between said first and second members after a rotary motion of said feedscrew 84, etc. is terminated.

Regarding claim 5, said pedal arm 10 includes said first (12, 102, etc.) and second (14) members, and said other (12, 102, etc.) of said first and second members which does not have said operating portion 16 is a pivotal arm 12, 102, etc. which is disposed pivotally about a support shaft 22, 24 (Fig. 3, ibid., line 46 et seq., column 4), etc. supported by said bracket 20, said pedal arm 12, 102, etc. being pivoted about said support shaft 22, 24 when said pedal arm 12, 102, etc. is operated at said operating portion 16.

Regarding claim 10, wherein said pair of guides 28 and 30, etc. are formed and positioned such that the vertical position of said operating portion 16 changes while an operating surface of said operating portion 16 is gradually inclined as said operating portion is moved in said longitudinal direction (due to the inclined slot 28 as seen in Fig. 14).

Regarding claim 11, said pair of guides 28 and 30, etc. are formed and positioned such that the vertical position of said operating portion 16 is lowered while an operating surface of said operating portion 16 is gradually inclined upwards as said operating portion is moved in a rearward direction of the vehicle parallel to said longitudinal direction (due to the inclined slot 28 as seen in Fig. 14).

Regarding claim 12, Toelke teaches a pedal device mounted on a bracket 20 fixed to a body of an automotive vehicle, and including a pedal arm 10 having an operating portion 16 at a lower end thereof, and a position adjusting device operable to adjust a position of said operating portion 16 in

a longitudinal direction of the automotive vehicle where said pedal arm 10 is placed in a non-operated state thereof, said position adjusting device comprising:

a first member 12, 102, etc. (Figs. 1-12) having a pair of straight guides 28 and 30, 28a and 28b, etc. which are positioned such that extension lines of said straight guides intersect each other as seen in, e.g., Fig. 14 (see regarding claim 2 above and Exhibit 2);

a second member 14 disposed movably relative to said first member 12, 102, etc. in a vertical plane parallel to said longitudinal direction, and having a pair of guide pieces 36, 38, etc. which are movable in engagement with said pair of guides 28 and 30, 28a and 28b, etc., respectively; and a positioning device operable to establish a desired relative position between said first and second members, by moving said pair of guides 28 and 30, 28a and 28b, etc. and said pair of guide pieces 36, 38, etc. relative to each other, said positioning device permitting said first and second members to maintain said desired relative position after said desired relative position is established,

wherein one (14) of said first and second members has said operating portion 16 and is movable relative to the other (12, 102, etc.) of said first and second members, to move said operating portion 16 in said longitudinal direction, and

wherein said pair of straight guides 28 and 30, 28a and 28b, etc. whose extension lines intersect each other are formed and positioned such that a vertical position of said operating portion 16 is inherently lowered while an operating surface of said operating portion 16 is gradually inclined upwards as said operating portion 16 is moved in a rearward direction of the vehicle parallel to said longitudinal direction as best seen in, e.g., Fig. 14.

10. Applicant's arguments filed March 17, 2003 have been fully considered but they are not persuasive.

35 USC 112

The previous 35 USC 112 rejection is withdrawn in view of applicant's remarks.

35 USC 102

Sitrin

First, applicant contends that:

> "Contrary to the assertion of the Examiner, Sitrin *appears to* disclose a pedal device having an operating portion 22/44 which moves in horizontal direction of a vehicle. That is, FIG. 2 clearly shows that the operating portion 22 of Sitrin is translated in a horizontal direction, as indicated by a solid line (before) and a dotted line (after) of the operating portion 22, and not in a vertical direction/position, as recited in claims 1-5 and 10-12 of Applicant's application."

By using hedging phrase "appears to," applicant apparently admits that there is a possibility that Sitrin's operating portion 22 does not move in horizontal direction of a vehicle. In fact, Fig. 2 of Sitrin shows that when the pedal arm 14f moves upwardly due to the lost motion linkage 14a, Sitrin's pedal inherently moves vertically upward therewith shown by dashed lines in Fig. 2.

Second, applicant asserts that:

> "For example, column 3, lines 54-55, column 5, lines 30-33, and FIGS. 1 and 2 of Sitrin *appear to* disclose a pair of guides 12d and 12e which are parallel to each other and extend horizontally. Accordingly, a movement of the operating portion 22, where guides 12d and 12e are operated with corresponding components of the pedal device, is translated into a horizontal direction and not raised or lowered. The operating portion 22 of Sitrin simply moves forward or reward in its operation, as indicated in column 4, lines 39-40."

The above assertion is likewise unpersuasive. Indeed, lines 54-55 of column 3 broadly recite "a pair of *generally* horizontally extending straight slots 12d and 12e." The term "generally" is a relative term, therefore, the slots 12d and 12e are not required to be horizontal as seen in Sitrin's Figs. 1 and 2. Indeed, the slots 12d and 12e are inclined similarly to applicant's slots. More important, since the pedal arm 14f is connected with the first member 12 by a lost motion linkage 32 and 14a, therefore, the arm 14f is moved upward vertically or downward vertically when the pin 32 is moved along the slot 14a.

Applicant's conclusion that "The operating portion 22 of Sitrin simply moves forward or reward in its operation, as indicated in column 4, lines 39-40" overlooks the fact that when the operating portion 22 of Sitrin moves forwardly, i.e., when the pin 32 moves in a forward/upward direction in the Exhibit 2, the portion 22 also moves upward vertically as seen by the dashed lines (phantom position) of the portion 22 in Fig. 2.

With respect to column 5, lines 30-33, these lines describe Sitrin's second embodiment of Figs. 3-5. To simplify the issue, the examiner withdraws the rejection based on Figs. 3-5 of Sitrin in this Office action, applicant's arguments based on these lines are moot.

Third, applicant notes that:

> "Applicant respectfully notes that Sitrin does not recite every element of the Applicant's claims 1-5 and 10-12. That is, Sitrin does not disclose or suggest a pedal device having a pair of guides which are "formed and positioned such that a vertical position of said operating portion changes as said operating portion is moved in said longitudinal direction," (Emphasis added). Sitrin *does not appear* to disclose the Applicant's concept of changing a vertical position of the operating portion 18 while being translated into the longitudinal direction

> (forward/ rearward), as shown by solid and dotted lines of the operating portion 18 of the Applicant's FIG. 1."

As transparently shown in Fig. 2 of Sitrin, the vertical inclined lost motion linkage 14a, 32 of Sitrin inherently makes Sitrin's pedal device moves in a vertical position as shown by solid and dotted lines of Sitrin's operating portion 22 of Sitrin's Fig. 2, i.e., in the same manner as the solid and dotted lines of the operating portion 18 of the Applicant's FIG. 1.

Fourth, applicant avers that:

> "In other words, while the Examiner is correct in noting that the disclosure of Sitrin corresponds to Japanese Utility Model #6-40292, a prior art cited and addressed by the Applicant, Sitrin suffers from the same problem as Japanese Utility Model #6-40292. That is, the pedal arm of Sitrin has constant attitude due to a translational movement necessitated by its components in the longitudinal direction of the vehicle."

As explained above, Sitrin's pedal arm does not have constant attitude because the guide slots 14a, 12d, and 12e are inclined as shown in Fig. 2.

In the same vein of arguments, applicant contends that:

> "With respect to claims 2 and 3, Sitrin also does not teach the features recited therein. For example, contrary to the Examiner's assertions, Sitrin does not disclose or suggest a pedal device having "a pair of straight guides which are positioned such that extension lines of said straight guides intersect each other such that an attitude of said operating portion changes . . . ," as recited in claim 2 (Emphasis added). Furthermore, Sitrin does not disclose or suggest a pedal device having the straight guides which are positioned such that "the vertical position of said operating portion is lowered while an operating surface of said operating portion is gradually inclined upwards . . . ," as recited in claim 3 (Emphasis added)."

The rejection of claims 2 and 3 based on Sitrin is withdrawn in view of applicant's now showing of the extension lines in corrected Fig. 1. Applicant's arguments about claims 2 and 3 based on Sitrin are moot.

Fifth, applicant contends that:

> "Referring to the Office Action, Exhibit 1 (FIGS. 1 and 2 of Sitrin) cited by the Examiner, Applicant respectfully notes that extension lines of guides 12d and 12e do not intersect each other. On the other hand, a guide 14a, which may have been mistakenly selected by the Examiner to pair with the guide 12d, is provided for a different function, and accordingly, the 14a and 12d pair do not cooperate with each other to change the attitude of the operating portion 22."

Since applicant's original disclosure did not specifically disclose that the extension lines are the extensions of the guides 32 and 34 as now shown in corrected Fig. 1, therefore, the examiner had to guess the meaning of the term "extension lines" in original claim 2. The Exhibit 1 attached to the first Office action on December 16, 2002 was based on the examiner's best understanding of the metes and bounds of applicant's original claim 2. Due to applicant's showing of extension lines in corrected Fig. 1, the examiner now has a better claim construction of applicant's claim 2. Therefore, the Exhibit 1 in the previous Office action is withdrawn. Applicant's tandem arguments about the extension lines in previous Exhibit 1 are moot.

Finally, applicant asserts that:

> "In particular, the guide 14a, which is selected by the Examiner to draw an extension line, is provided in Sitrin to move a pivot pin 32 in upward and downward directions, so as to maintain "the ratio between the distance from the pivot axis defined by pivot pin 32 to pedal pad 22 and the distance from the pivot axis to pin 18 . . . ," as disclosed in column 4, lines 45-48 of Sitrin. *In other words, the direction of the operating portion 22 is not defined by the pair of guides 14a and*

> *12d. Rather, it is defined by the guides 12d and 12e which are a pair of parallel straight slots, and extensions thereof do not intersect each other*. The S point depicted by the Examiner in the Exhibit 1 is therefore derived from a combination of wrong guides 14a and 12d, and is not correct. Accordingly, Sitrin does not teach or suggest the Applicant's concept of changing the attitude of an operating portion or having an operating surface of the operating portion inclined upwards along with the movement of the operating portion in a vertical direction."

Contrary to applicant's subjective interpretation, the direction of the operating portion 22 is defined by all of the guides 14a, 12d, 12e, 10c, 10e as explicitly explained by Sitrin in, e.g., lines 32, column 4 through line 7, column 5. It is unclear to the examiner as to why applicant merely relies on the guides 12d and 12e, but ignores the other guides. Common sense teaches that Sitrin certainly has a reason to make/use the other guides 14a, 10c, 10e, etc.

With respect to applicant's arguments relied on the extension lines, such as, "the S point depicted by the Examiner in the Exhibit 1 is therefore derived from a combination of wrong guides 14a and 12d," these arguments are now moot since amended claim 2 is no longer rejected based on Sitrin.

Toelke et al.

First, applicant states that:

> "The Examiner correctly notes that Toelke et al. *appears to* disclose a pedal device having guides 28 and 30 which are inclined, and extension lines which intersect each other. *However, an operating portion 16 of the pedal device of Toelke et al. does not move in a vertical direction*, and therefore, does not show or describe every element of Applicant's claims 1-5 and 10-12. That is, Toelke et al. *appears to* disclose guides 28 and 30 which are parallel to each other, substantially straight and horizontal, such that first and second members (upper and lower pedal arms 12 and 14) are moved relative

> to each other along the guides 28 and 30, in other words, in a horizontal direction (See column 5, lines 40-42 and FIGS. 14 and 17 of Toelke et al.)."
>
> Simply put, Toelke et al. does not disclose or suggest a pedal device having a pair of guides which are "formed and positioned such that a vertical position of said operating portion changes as said operating portion is moved in said longitudinal direction," (Emphasis added). In fact, Toelke et al. expressly discloses to the contrary."

The examiner respectfully submits that an anticipatory reference, however, need not duplicate word for word what is in the claim. Anticipation can occur when a claimed limitation is "inherent" or otherwise implicit in the relevant reference. *Standard Haven Products, Inc. v. Gencor Industries, Inc.*, 21 USPQ2d 132, 1328 (CAFC 1991).

In the instant case, Toelke teaches: (a) in line 18 et seq., column 5 that the guides 28 and 30 can alternatively be separated portions of a single slot such as a "C-shaped," "S-shaped" or other nonlinear slot; and (b) in line 55 et seq., column 12 that the guides in the first and third embodiments (Figs. 1-8 and 10-12) can be inclined slots like the second, fourth, and fifth embodiments (Figs. 9 and 13-18). Hence, when one changes the orientation of the Toelke's guides in Toelke's first and third embodiments (Figs. 1-8 and 10-12) to become inclined like Toelke's guides in Toelke's fourth and fifth embodiments (Figs. 13-18), the guides 28 and 30 become inclined in the same manner as shown in Toelke's Fig. 14 or applicant's Figs. 1 and 2. Consequently, when Toelke's pin 36 slides vertically upward or downward in the slot 28, the vertical position of the operating portion 16 is changed therewith as said operating portion 16 is moved in said longitudinal direction as best seen in Toelke's Fig. 14. This operation is substantially identical to applicant's operation shown in applicant's Fig. 1.

Second, applicant asserts that:

> "For example, Toelke et al. discloses that two guides 28a and 28b (non-parallel slots/embodiment of FIG. 9) are formed such that the pedal 16 moves or travels 'along a substantially linear horizontal path,' that is, the pedal 16 'moves in a forward/rearward direction and generally **remain at the same height**.' (See column 9, lines 42-44 and 63-65, column 10, lines 40-42 and column 12, lines 22-54 of Toelke et al.) With respect to a pedal movement of embodiments of FIGS. 14 and 17, having similar structure of that of the embodiment of FIG. 9, Toelke et al. does not provide any disclosure stating the otherwise. That is, contrary to the Examiner's assertion, Toelke et al. expressly discloses a pedal device having an operating portion which moves only in a horizontal direction."

Applicant's above contention apparently disregards Toelke's explicit teachings that the slots 28 and 30 can be "C-shaped," "S-shaped," and particularly, *the guides in the first and third embodiments (Figs. 1-8 and 10-12) can be inclined slots like the second, fourth, and fifth embodiments (Figs. 9 and 13-18).* In other words, if one follows Toelke's teachings to reorient the slots 28 and 30 in Figs. 1 and 2 of Toelke to become inclined as shown in Toelke's Fig. 14, one would have the pedal device that is substantially identical to the device shown in applicant's Figs. 1 and 2. Simply put, Toelke expressly teaches the embodiment that has the operating portion which moves not only in a horizontal direction but also in a vertical direction as seen in Fig. 14 of Toelke.

Conclusion

The examiner fully agrees with applicant's statement that "In order for a document to anticipate a claim, the document must teach each and every element of the claim. See MPEP 2131." Accordingly, since Sitrin or Toelke et al. teaches the features recited in pending claims as stated above, the rejection under 35 USC 102 is maintained.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Luong whose telephone number is (703) 308-3221. The examiner can normally be reached on Monday-Thursday from 9:30 AM EST to 8:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci, can be reached on (703) 308-3668. The fax phone number for this Group is (703) 305-7687. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Luong

May 19, 2003

Vinh T. Luong
Primary Examiner